

EXHIBIT J

SP Payroll corp.

1832 Second Ave
New York, NY 10128
212 289 3800
fax: 212 202 5354

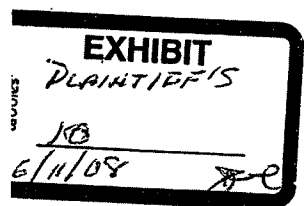
I understand that company policy is I will receive a 1 hour meal break per shift. The 1 hour per shift will be deducted from the time card total. The break must be taken, at employee discretion.

Yo entiendo que la reglas de la compania es que yo recibire 1 hora de luch por cada turno. La hora por cada turno sera reducida de el total de horas de la tajeta. El tiempo para la comida devera ser cojido.

Rolando Rojas

employee name

employee signature



DEF001463

EXHIBIT K

1
2
3 UNITED STATES DISTRICT COURT

4 SOUTHERN DISTRICT OF NEW YORK

5 -----
6 ANGELO PENA, ROLANDO ROJAS, JOSE DIRECHO,
7 and FRANKLIN SANTANA, individually and
8 as behalf of others similarly situated,

9 Plaintiffs,

10 vs. No. 07 CV 7013

11 SP PAYROLL, INC., NICHOLAS PARKING CORP.,
12 IVY PARKING CORP., BIENVENIDO, LLC,
13 CASTLE PARKING CORP., SAGE PARKING CORP.,
14 and SAM PODOLAK,
15 Defendants.
16 -----

17 DEPOSITION OF JOSE RAMON COLON DIROCHE
18 New York, New York
19 Monday, November 12, 2007
20
21
22

23 Reported by:
24 Meredith Stoeckel
25 JOB NO. 14012-A

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1 J. Diroche
 2 A. Yes.
 3 Q. Do you understand that you are to give
 4 truthful answers to my questions?
 5 A. Yes.
 6 Q. Is there any reason today that you
 7 could not give truthful answers to my questions?
 8 A. No.
 9 Q. Are you taking any medication that
 10 would interfere with your ability to understand my
 11 questions?
 12 A. No.
 13 Q. Are you taking any medication that
 14 would interfere with your ability to give truthful
 15 answers?
 16 A. No.
 17 Q. Who are you employed by now?
 18 A. I'm a taxi driver right now.
 19 Q. Was there a time when you worked for
 20 the defendants as a parking attendant?
 21 A. Yes.
 22 Q. When was the last date on which you
 23 worked as a parking attendant for the defendants?
 24 A. I don't remember exactly, but it has
 25 been a month and three weeks. Around there.

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1 J. Diroche
 2 there I went to Jerome. 169 and Jerome.
 3 Q. How long did you work at 199 and
 4 Webster?
 5 A. I worked there for about four days.
 6 Then they put me on -- then they put me to work at
 7 169 and Jerome.
 8 Q. How long did you work at 169 Jerome?
 9 A. I have worked there the whole time.
 10 Q. Did you work at any other garages
 11 besides 199 Webster or 169 Jerome?
 12 A. Yes.
 13 Q. What other garages did you work at?
 14 A. 187 and Valentine, and Bienvenido which
 15 is next to 169 at 1277. And 155 and Saint
 16 Nicholas.
 17 Q. Where did you work most of the time?
 18 A. The most part of the time -- 169 and
 19 Jerome.
 20 Q. When you first started work in 2001 who
 21 was your supervisor?
 22 A. At that time the supervisor was
 23 Cardozo.
 24 Q. Is Cardozo still employed by
 25 defendants?

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1 J. Diroche
 2 Q. Did you resign from your employment or
 3 were you terminated?
 4 A. I resigned.
 5 Q. What was the reason that you resigned?
 6 A. To start cabbng. I wasn't happy with
 7 what was going on.
 8 Q. What were you not happy about?
 9 A. I was earning little.
 10 Q. Did you tell anyone that the reason you
 11 quit your job was because you were not getting
 12 enough hours?
 13 A. I let Raj know that I was leaving the
 14 job because of that, yes. Yes. They took away
 15 some hours.
 16 Q. Just prior to when you quit your job
 17 how many hours per week were you working?
 18 A. Fifty-eight.
 19 Q. When did you first start work with the
 20 defendants?
 21 A. I don't remember the date, but it was
 22 at the beginning of 2001.
 23 Q. When you first began working for
 24 defendants in 2001 what garage did you work at?
 25 A. I started at 199 and Webster. And from

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1 J. Diroche
 2 A. No.
 3 Q. When did he leave working for
 4 defendants?
 5 A. Around the time when I started working
 6 with them. He didn't last too long after that.
 7 Q. Who was your supervisor after Cardozo?
 8 A. A man named Pablo.
 9 Q. How long was Pablo your supervisor?
 10 A. Couple of months.
 11 Q. Who was your supervisor after Pablo?
 12 A. Raj.
 13 Q. Was Raj your supervisor the entire time
 14 after Pablo?
 15 A. He has been the one always. Raj and
 16 another Pablo that works for Sam.
 17 Q. When you first started working for
 18 defendants in 2001 how many hours per week did you
 19 work?
 20 A. I have always worked six days, 60
 21 hours. Sometimes they would take away days.
 22 Sometimes they would give my days more. It
 23 depends. But normally it was six or seven days we
 24 worked. In case somebody was missing, they needed
 25 someone.

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1 J. Diroche
 2 Q. Was your regular workweek six days?
 3 A. Yes.
 4 Q. How many hours per day did you work?
 5 A. Twelve hours. From seven to seven.
 6 Q. Did there come a time when your hours
 7 were reduced to 48 hours?
 8 A. Yes.
 9 Q. When was that?
 10 A. 2006.
 11 Q. When in 2006?
 12 A. I don't remember the date.
 13 Q. Do you remember whether it was early in
 14 the year of 2006?
 15 A. Yes. Around there.
 16 Q. Could it have been February of 2006?
 17 A. More or less. Around there.
 18 Q. When your hours were reduced to 48
 19 hours in February of 2006 how many days per week
 20 did you work?
 21 A. Five.
 22 Q. Is that five days per week?
 23 A. Yes.
 24 Q. How many hours per day did you work on
 25 each of the five days?

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1 J. Diroche
 2 A. Four days at ten hours a day. And one
 3 day at eight.
 4 Q. Were you paid by check?
 5 A. Yes.
 6 Q. Were you paid by check for the entire
 7 time that you worked for defendants?
 8 A. Lunch hour was always missing.
 9 Q. Were you always paid by check?
 10 A. Yes. Check and cash.
 11 Q. How much were you paid in cash?
 12 A. Fifteen, \$20.
 13 Q. Who gave you the cash?
 14 A. The check was inside the envelope.
 15 The supervisor would give it to me -- Raj.
 16 Q. In the complaint in paragraph 12 it
 17 states that you were paid 20 to \$70 a week in
 18 cash. Is that correct or incorrect?
 19 A. That's incorrect.
 20 Q. Did anyone tell you why you were
 21 receiving this cash?
 22 A. No one told me.
 23 Q. Did you ever ask anyone why you were
 24 receiving this cash?
 25 A. I did not ask. I figured it was for

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1 J. Diroche
 2 the extra hours I worked.
 3 Q. Did there come a time when you stopped
 4 receiving cash?
 5 A. In 2006 when I was working.
 6 Q. Did anyone tell you why you stopped
 7 receiving cash?
 8 A. No.
 9 Q. Did you ever ask anyone why you stopped
 10 receiving cash?
 11 A. No.
 12 Q. Did you stop receiving cash at the same
 13 time that your hours were reduced in February of
 14 2006?
 15 A. No. Before that.
 16 Q. How long before that?
 17 A. I don't remember.
 18 Q. Isn't it a fact that you stopped
 19 receiving the cash because the company started
 20 paying for your lunch hour?
 21 A. No.
 22 Q. Did your paycheck have a stub that
 23 listed the number of hours that you worked?
 24 A. Yes.
 25 Q. Did your paycheck list what your hourly

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1 J. Diroche
 2 rate of pay was?
 3 A. They put it on the check, but not
 4 completely.
 5 Q. I was asking whether it contained your
 6 hourly rate of pay?
 7 A. Yes.
 8 Q. And did it list overtime hours on this
 9 stub?
 10 A. Yes.
 11 Q. And do you understand what time and a
 12 half is?
 13 A. No.
 14 Q. Do you understand that if you work over
 15 40 hours in a week you must be paid time and a
 16 half of your hourly rate?
 17 A. If I would have known that I would have
 18 told them -- claimed it.
 19 Q. Do you know if you received a higher
 20 rate of pay for hours you worked over 40?
 21 A. No.
 22 Q. In your lawsuit against the defendants
 23 what hours are you claiming defendants did not pay
 24 you?
 25 A. The lunch hour.

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1 J. Diroche
 2 Q. Any other hours?
 3 A. They took out two hours a day from my
 4 check. I don't know why. I told Raj about it.
 5 They never paid it. Never paid it.
 6 Q. During what period of time did they
 7 take two hours out per day?
 8 A. Till now. Till the beginning of 2006.
 9 Q. From the beginning of 2006 until now?
 10 A. I worked with them since I came into
 11 this country.
 12 Q. I want to know when did they first
 13 start taking out two hours per day?
 14 A. I don't remember.
 15 Q. Do you remember what year it first
 16 began?
 17 A. I don't know, because I noticed that on
 18 my check about a year or so ago.
 19 Q. When you went to work did you punch a
 20 time clock?
 21 A. Yes.
 22 Q. What time did you start work?
 23 A. Seven p.m. to seven a.m.
 24 Q. And when you finished work at seven
 25 a.m. did you punch out your time card?

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1 J. Diroche
 2 A. Yes.
 3 Q. On your check were you paid for all of
 4 the hours from punching in-at seven p.m. until you
 5 punched out at seven a.m.?
 6 A. No. The lunch hour was missing.
 7 Q. Were there any other hours missing?
 8 A. What you asked me before about time and
 9 a half, that they were supposed to pay, they
 10 didn't pay.
 11 Q. Were there any hours that you were not
 12 paid at all for other than the lunch hour?
 13 A. No.
 14 Q. What hours did you work that you were
 15 not paid for other than the lunch hour?
 16 A. When I worked seven days and Raj would
 17 call me, someone was missing, someone was out, he
 18 would call me. I go and cover for him.
 19 Q. Did you punch in when you covered for
 20 this person?
 21 A. That's why they didn't pay me because I
 22 didn't have the card with me. It was in the place
 23 where I worked normally.
 24 Q. How often did you work on a seventh day
 25 for someone?

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1 J. Diroche
 2 A. It wasn't too frequently. It was when
 3 someone was out and he needed to cover.
 4 Q. In all of the time that you worked for
 5 the defendants how often did you cover for someone
 6 on a seventh day?
 7 A. I don't remember.
 8 Q. Was your regular day off a Sunday?
 9 A. No.
 10 Q. The number of times that you covered
 11 for another employee was it less than 10?
 12 A. More or less.
 13 Q. Does that mean that about 10 is the
 14 right number of times?
 15 A. Yes.
 16 Q. Did you ever ask anyone why you were
 17 not being paid when you covered for someone?
 18 A. Raj I did.
 19 Q. What did Raj say?
 20 A. That he is paying me.
 21 Q. Did he say anything else?
 22 A. Yes. To call Sam.
 23 Q. Did you call Sam?
 24 A. No, I don't usually call him.
 25 Q. Did Raj tell you that the hours you

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1 J. Diroche
 2 worked when covering for someone were included in
 3 your check?
 4 A. Yes.
 5 Q. Are you claiming that you were not paid
 6 for any of the hours you worked when you were
 7 covering for someone else?
 8 A. Sometimes they paid.
 9 Q. Sometimes they paid for all of the
 10 hours when you worked for someone else?
 11 A. Not all, not all.
 12 Q. On each of the days on which you
 13 covered for someone else did they pay some of your
 14 hours?
 15 A. Excuse me?
 16 Q. Is there any day that you worked for
 17 someone else that you did not receive any pay at
 18 all?
 19 A. No.
 20 Q. So on all of the days that you worked
 21 for someone else you received pay for some of your
 22 hours?
 23 A. Yes.
 24 Q. And on each of these days how many
 25 hours were you not paid for?

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1 J. Diroche
 2 A. I worked 12 hours. They would pay me
 3 six.
 4 Q. Okay. During your regular workweek
 5 however they paid you for all of your hours other
 6 than your lunch hour; is that correct?
 7 A. Yes.
 8 Q. Have you totaled up the number of hours
 9 that you believe that you have not been paid for
 10 by the defendants?
 11 A. No.
 12 Q. Just before you resigned your
 13 employment what was your hourly rate of pay?
 14 A. 3.16. Per hour 7.15.
 15 Q. On your paycheck was any rate of pay
 16 listed in excess of \$10 per hour? An hourly rate.
 17 A. From 2006 on.
 18 Q. When you say 2006 do you mean February
 19 2006?
 20 A. Yes.
 21 Q. Between the time you started work for
 22 defendants in 2001, and the time that you resigned
 23 your employment, did you have any leave of
 24 absence?
 25 A. Yes.

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1 J. Diroche
 2 Q. When was that?
 3 A. June to July. One month.
 4 Q. What year?
 5 A. Now. Before.
 6 Q. 2007?
 7 A. Yes, 2007.
 8 Q. Where were you during this leave of
 9 absence?
 10 A. Dominican Republic. Santo Domingo.
 11 Q. You are not claiming are you that the
 12 defendants owe you any money for when you were in
 13 Santo Domingo?
 14 A. No.
 15 Q. You didn't perform any work for the
 16 defendants while you were in Santo Domingo did
 17 you?
 18 A. No.
 19 Q. Other than this leave of absence was
 20 there any period of time from 2001 until your
 21 resignation that you were not working for
 22 defendants?
 23 A. Yes.
 24 Q. When was that?
 25 A. I always go to Santo Domingo during the

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1 J. Diroche
 2 year. Once a year. Or two-times a year.
 3 Q. Do you have a passport from the
 4 Dominican Republic?
 5 A. Yes.
 6 Q. Do you have a passport from the United
 7 States?
 8 A. No.
 9 RQ MR. WALKER: We request production of
 10 his Dominican Republic passport.
 11 MR. FAILLACE: Take it under
 12 advisement.
 13 MR. WALKER: The reason we are
 14 requesting production is we have a right
 15 to confirm based upon the entry and exit
 16 stamps the times when he was out of the
 17 country.
 18 Q. In 2001 after you began working for
 19 defendants did you go to the Dominican Republic?
 20 A. Yes.
 21 Q. Do you recall when in 2001 that was?
 22 A. No.
 23 Q. Do you know how long you stayed in the
 24 Dominican Republic?
 25 A. I don't remember.

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1 J. Diroche
 2 Q. When you go to the Dominican Republic
 3 is there generally a length of time that you stay
 4 there?
 5 A. Because my family lives there.
 6 Q. I understand. How long do you
 7 generally stay in the Dominican Republic?
 8 A. Lately been staying a month, but before
 9 I used to go for two months, three months.
 10 Q. In 2001 do you believe that you were in
 11 the Dominican Republic for two to three months?
 12 A. I don't know. You can confirm it on
 13 the passport. With the stamps.
 14 Q. How long is a passport for the
 15 Dominican Republic valid for?
 16 A. Maybe eight, eight, four.
 17 Q. Since 2001 have you had to renew your
 18 passport for the Dominican Republic?
 19 A. Yes.
 20 Q. When did you renew it?
 21 A. I think it was 2004, 2005. Around
 22 there.
 23 Q. Do you still have the old passport?
 24 A. I think it was stapled onto the other
 25 one. I don't know if it is still there.

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1 J. Diroche
 2 RQ MR. WALKER: I would ask for production
 3 of both the old passport and the new
 4 passport.
 5 And we would direct counsel to
 6 direct his client not to destroy or
 7 otherwise dispose of those
 8 passports.
 9 A. What if I can't find the old one?
 10 Q. You should make your best and diligent
 11 search for it.
 12 What is the longest that you remember
 13 staying in the Dominican Republic since 2001?
 14 A. Five months.
 15 Q. What is the shortest trip you remember?
 16 A. One month, four weeks.
 17 Q. Other than your trips to the Dominican
 18 Republic have you left the United States since
 19 2001?
 20 A. No.
 21 Q. Other than your trips to the Dominican
 22 Republic have you taken any vacation time from
 23 your job with defendants since 2001?
 24 A. No.
 25 Q. Since you have been employed by
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1 J. Diroche
 2 away. And he had to go get some checks. I signed
 3 it and I continued working.
 4 Q. Did you read it before you signed it?
 5 A. I didn't read it. Later on he told me
 6 if they -- if it was okay that they took an hour
 7 out of my check for lunch. I don't take lunch.
 8 I eat lunch at home. I work nights, not days.
 9 All my life I have worked nights.
 10 Q. Is it your testimony that during the
 11 time that you worked for the company from seven
 12 p.m. to seven a.m. you did not take a meal break?
 13 A. No.
 14 Q. Did Raj tell you that you should be
 15 taking one hour for lunch?
 16 A. No.
 17 Q. The document that you have in front of
 18 you is also in Spanish is it not?
 19 A. Yes.
 20 Q. Can you read that Spanish?
 21 A. Yes.
 22 Q. Does that say that you will receive a
 23 one-hour meal break?
 24 A. It says it there. But when I signed it
 25 I didn't read it. I was busy working. A lot of
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1 J. Diroche
 2 defendants in 2001 have you taken any sick days?
 3 A. No.
 4 (Diroche Exhibit-1, SP Payroll
 5 document, marked for identification, as
 6 of this date.)
 7 Q. I'm going to show the witness what has
 8 been marked as Exhibit 1, and ask if that is your
 9 signature on the document?
 10 A. Yes.
 11 Q. Do you know when you signed this
 12 document?
 13 A. I know I signed it, but I don't
 14 remember the date.
 15 Q. Do you remember the year?
 16 A. It was now. 2006.
 17 Q. Did you sign this document about the
 18 time that your hours changed in February 2006?
 19 A. I don't remember.
 20 Q. Did you sign this before your hours
 21 changed or after your hours changed?
 22 A. I don't remember.
 23 Q. Who gave you this document to sign?
 24 A. Supervisor. The midnight supervisor.
 25 I was busy, busy. He said, here, sign this right
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1 J. Diroche
 2 cars fill up the garage. I have to take them out.
 3 Q. You were here last Friday for the
 4 depositions were you not?
 5 A. Yes.
 6 Q. You heard Mr. Pena testify?
 7 A. Yes.
 8 Q. You heard Mr. Rojas testify?
 9 A. Yes.
 10 Q. What do you think the odds are of all
 11 three of you having signed the same document
 12 without read it?
 13 A. I don't know about them. I know about
 14 me.
 15 MR. FAILLACE: Objection. You are
 16 making him make assumptions about other
 17 people. He is talking about himself.
 18 A. They work different hours than I do. I
 19 don't know about them.
 20 Q. Isn't it a fact that you're saying that
 21 you didn't read it because you heard them saying
 22 they didn't read it?
 23 MR. FAILLACE: Objection.
 24 A. No, I swore here today not to tell a
 25 lie.
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1 J. Diroche
 2 **Q. Is it your testimony that during the**
 3 **entire time that you worked for defendants that**
 4 **you never took breaks whatsoever?**
 5 A. No. My shift was the one that you
 6 worked the most in. I couldn't.
 7 **Q. Is it your testimony that you never**
 8 **left the garage during your shift to perform any**
 9 **personal errands?**
 10 A. No. How would I do that? It's my job.
 11 How am I going to abandon my job? It's two
 12 floors. One upstairs, one downstairs. There are
 13 a lot of cars in there. When there's one
 14 upstairs, there's one downstairs receiving.
 15 Couldn't do it.
 16 **Q. How many cars entered and left the**
 17 **garage during a typical hour during your shift?**
 18 A. In one hour maybe 15, 20. Between the
 19 monthlies and the dailies.
 20 **Q. How many employees were on duty working**
 21 **during your shift?**
 22 A. Two.
 23 **Q. Two including you or two plus you?**
 24 A. One plus myself.
 25 **Q. Just prior to your resignation what was**

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1 J. Diroche
 2 **the name of the employee that you worked with?**
 3 A. My co-worker?
 4 **Q. Yes.**
 5 A. There were several. Now they got three
 6 shifts. Before it was only two shifts.
 7 **Q. I want to know what was the name of the**
 8 **individual who was working during your shift?**
 9 A. Pedro Breton, Edison.
 10 **Q. Alvarez?**
 11 A. I don't know his last name. To me he's
 12 Breton, because Breton is his father.
 13 Bienvenido worked with me also. Edwardo Colon.
 14 The ones that worked on my shift only
 15 or ones that relieved me also?
 16 **Q. Just your shift.**
 17 A. Right now Pedro Breton. Bienvenido.
 18 Edison. Edwardo Colon. I don't remember the
 19 others.
 20 **Q. Did you ever work with Samuel Gerraro?**
 21 A. At the beginning when I started working
 22 at the parking garage.
 23 **Q. When was the last time you spoke to**
 24 **Mr. Gerraro?**
 25 A. I don't remember.

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1 J. Diroche
 2 **Q. Have you spoken to him in the last**
 3 **year?**
 4 A. We talked when I used to work there.
 5 We used to work together. But since I left I
 6 haven't spoken to him.
 7 **Q. Have you spoken to him in the last**
 8 **year?**
 9 A. Yes.
 10 **Q. Was that by telephone or in person?**
 11 A. In person. We worked together. It was
 12 only a wall that divided us. We worked together.
 13 **Q. And was there any discussion about any**
 14 **lawsuit against defendants?**
 15 A. No.
 16 **Q. Did Mr. Gerraro mention any lawsuit**
 17 **against defendants?**
 18 A. No.
 19 **Q. Did you mention any lawsuit that you**
 20 **were going to bring against defendants?**
 21 A. No. I don't talk about that with no
 22 one.
 23 **Q. Do you know a Percio Ramon-Amparo?**
 24 A. Yes. We worked together for a little
 25 while.

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1 J. Diroche
 2 **Q. Have you spoken to him in the last**
 3 **year?**
 4 A. No. Since he's left the garage, no.
 5 **Q. Have you ever had any discussions with**
 6 **Mr. Ramon-Amparo regarding lawsuits against the**
 7 **defendant?**
 8 A. No.
 9 **Q. Do you know Roberto Rojas?**
 10 A. I worked with him at 199 and Webster.
 11 **Q. Have you spoken to Mr. Rojas in the**
 12 **last year?**
 13 A. No.
 14 **Q. Have you had any discussions with**
 15 **Mr. Rojas regarding any lawsuits against**
 16 **defendant?**
 17 A. No. I haven't seen that man in about
 18 two years. Ever since they -- they sent us to
 19 different places. He went somewhere. And I
 20 haven't seen him since.
 21 **Q. Do you know who Nestor Cedeno is?**
 22 A. Yes, we worked together.
 23 **Q. When was the last time you spoke to**
 24 **Mr. Cedeno?**
 25 A. I don't remember. Ever since he left

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1 J. Diroche
2 the garage.
3 Q. Have you had any discussions with
4 Mr. Ceden regarding lawsuits against the
5 defendants?
6 A. No. Since he left I haven't seen him
7 since.
8 Q. Do you know who Jose Tavares is?
9 A. No.
10 Q. When did you first meet Mr. Faillace?
11 A. I found the number that said lawyer
12 over there at the garage, the parking garage.
13 And I called him to check with me, and to consult
14 with me about my case. He gave me the address and
15 I went. Told me what I had to bring and I brought
16 it.
17 Q. Did you go alone or with anyone else?
18 A. Alone.
19 Q. When did you go visit Mr. Faillace for
20 the first time?
21 A. It's been -- several months ago.
22 Q. What is your Social Security number?
23 A. 087-90-4299.
24 Q. Have you ever worked for defendants
25 under any other name other than your name here

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1 J. Diroche
2 A. Yes.
3 Q. Those were the approximately 10 times
4 that you were covering for another employee?
5 A. More or less in the time that I was
6 working there, yes.
7 Q. And you were paid for part of that
8 time, but not all of that time; is that correct?
9 A. Yes.
10 Q. Did you ever pay anyone to work for you
11 at the garage?
12 A. If someone has paid to work for me?
13 Q. Yes. Did you ever pay anyone to work
14 for you?
15 A. No.
16 Q. Did you ever declare on your income tax
17 form the amount of money you received in cash?
18 A. No.
19 Q. Did you keep any of your pay stubs?
20 A. I saved all of them.
21 Q. You saved all of them?
22 MR. FAILLACE: We'll provide them
23 to you. We're getting them stamped.
24 Q. Did you take any documents from the
25 defendants?

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1 J. Diroche
2 today?
3 A. No.
4 Q. Have you ever allowed anyone to punch
5 in your time card?
6 A. No.
7 Q. Have you ever allowed anyone to punch
8 out your time card?
9 A. No.
10 Q. I just want to be sure that I
11 understand your testimony. Is it your testimony
12 that you were paid for all of the hours from the
13 time you punched in until the time you punched out
14 except for your lunch hour?
15 A. Yes.
16 Q. Do you claim that you worked any time
17 before you punched in at your job?
18 A. Before, no. After punching out my
19 card, yes.
20 Q. What hours did you work after punching
21 out your card?
22 A. Raj has sent me to 199. To 155. Next
23 door to Bienvenido.
24 Q. Were those the times that you were
25 covering for another employee?

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Page 33

1 J. Diroche
2 A. No.
3 Q. Other than the pay stubs do you have
4 any other documents concerning any compensation
5 you received from defendants?
6 A. I got verification that they paid me
7 when I went to Santo Domingo.
8 Q. You were paid vacation when you went to
9 Santo Domingo?
10 A. Yes.
11 Q. How much were you paid?
12 A. They gave me 510. Something like that.
13 Q. Approximately?
14 A. 510, 540. Something like that.
15 Q. Did you receive this in a check or in
16 cash?
17 A. By check.
18 Q. Who gave you this check?
19 A. Raj.
20 Q. Did Raj say anything to you when he
21 gave you this check?
22 A. No. He told me to return by the 17th
23 or something like that. That he was going to go
24 on vacation then.
25 Q. Did you ever get paid for any other

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Page 34

1 **J. Diroche**
2 **time for which you did not work?**
3 A. No.
4 **Q. Did you ever receive holiday pay?**
5 A. No, never.
6 **Q. Have you discussed your lawsuit with**
7 **anyone besides your lawyer?**
8 A. No.
9 **Q. Have you had any discussions with the**
10 **other plaintiffs concerning this lawsuit?**
11 A. No.
12 MR. WALKER: No further questions.
13 EXAMINATION BY
14 MR. FAILLACE:
15 MR. FAILLACE: Let the record show
16 -- I'm going to ask him some questions
17 without taking any breaks.
18 **Q. When you earlier said that they had**
19 **lowered your hours, earlier you said this was in**
20 **2006; is that correct?**
21 A. Yes.
22 **Q. Did you mean this year 2006 or last**
23 **year 2006?**
24 A. Now. 2007.
25 **Q. So your hours were only lowered in**

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1 **J. Diroche**
2 A. I said I didn't remember, but it was
3 just before that.
4 **Q. So from 2001 all the way through 2006**
5 **you never were told not to work your lunch break?**
6 A. No. Never. To me that never even
7 existed.
8 **Q. Did you ever complain to anybody about**
9 **the fact that they weren't paying you for the**
10 **lunch break?**
11 A. Amongst ourselves, our co-workers.
12 **Q. Do you know if any of your co-workers**
13 **complained to someone?**
14 A. With regards to the lunch hour?
15 **Q. Yes.**
16 A. Yes, they complained.
17 MR. WALKER: Objection.
18 A. They were taking out a lunch hour and
19 we weren't taking it. We had no time to take a
20 lunch hour. We were working.
21 **Q. Did you ever complain to your manager**
22 **about the fact that he made you work a seventh day**
23 **and not pay you for it?**
24 MR. WALKER: Objection.
25 A. Yes, I complained to Raj.

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Page 35

1 **J. Diroche**
2 **February 2007; is that correct?**
3 A. Yes.
4 **Q. Not in 2006 as Mr. Walker lead you to**
5 **say?**
6 MR. WALKER: Objection.
7 A. No, it is now in 2007.
8 **Q. Why did you say 2006?**
9 A. I got confused with the question.
10 **Q. Did you work more than 10 hours a day?**
11 MR. WALKER: Objection.
12 A. Yes.
13 **Q. And did you receive a payment of**
14 **minimum wage for every day you worked more than 10**
15 **hours a day?**
16 A. They paid me minimum wage. Yes, that's
17 what they paid.
18 **Q. Did they give you an additional daily**
19 **pay, one hour of daily pay, an additional hour of**
20 **daily pay, because you worked more than 10 hours a**
21 **day? One additional pay?**
22 A. Never.
23 **Q. When they had you sign this document,**
24 **that Mr. Walker presented to you, was that around**
25 **the time that they lowered your hours?**

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Page 37

1 **J. Diroche**
2 **Q. What did Raj say?**
3 A. Same thing he always said. In the
4 matter of speaking that he always used. If you
5 don't want to work you can leave. When I
6 complained about the hour he said he was going to
7 pay but never did.
8 **Q. Just to clarify. You worked 12 hours a**
9 **day, six days a week, from 2001 all the way**
10 **through the end of 2006?**
11 MR. WALKER: Objection.
12 A. Can you repeat the question?
13 (Continued on next page to include
14 jurat.)

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EXHIBIT L

SP Payroll corp.

1832 Second Ave
New York, NY 10128
212 289 3800
fax: 212 202 5354

I understand that company policy is I will receive a 1 hour meal break per shift. The 1 hour per shift will be deducted from the time card total. The break must be taken, at employee discretion.

Yo entiendo que la reglas de la compania es que yo recibire 1 hora de luch por cada turno. La hora por cada turno sera reducida de el total de horas de la fajeta. El tiempo para la comida devera ser cojido.

Doreen Colon

employee name

employee signature

DEF001466

EXHIBIT M

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 -----
4 ANGELO PENA, ROLANDO ROJAS, JOSE DIRECHO,
5 and FRANKLIN SANTANA, individually and
6 as behalf of others similarly situated,

7 Plaintiffs,

8 vs. No. 07 CV 7013

9 SP PAYROLL, INC., NICHOLAS PARKING CORP.,
10 IVY PARKING CORP., BIENVENIDO, LLC,
11 CASTLE PARKING CORP., SAGE PARKING CORP.,
12 and SAM PODOLAK,

13 Defendants.
14 -----
15
16
17

18 DEPOSITION OF FRANKLIN SANTANA
19 New York, New York
20 Monday, November 12, 2007
21
22

23 Reported by:
24 Meredith Stoeckel
25 JOB NO. 14012-B

Page 10

1 F. Santana
2 **Q. Which of those garages have you worked**
3 **at the most?**

4 A. Bienvenido Parking. I am always at
5 that garage. I hardly ever move from there. Only
6 when I go to cover someone else on my off day.

7 **Q. Did you ever work for a garage named**
8 **Nicholas Parking?**

9 A. Nicholas -- which one is that? I also
10 worked at 14th Street. But I don't know the name.
11 I don't remember the name.

12 **Q. When were you initially hired by the**
13 **defendant?**

14 A. August 10, 2003.

15 **Q. Did you work for any of the defendant**
16 **garages prior to August 10, 2003?**

17 A. I don't remember. But that's the date
18 that I have most in mind.

19 **Q. By which garage were you initially**
20 **hired?**

21 A. 169 and Jerome Avenue. Next door to
22 the Bienvenido Parking which I work at now. But I
23 don't remember the name. That's where I started.

24 **Q. How did you learn of the position?**

25 A. I was looking for work. I passed by
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Page 11

1 F. Santana
2 that garage. There was a sign that said they
3 needed workers. That's it.

4 **Q. Did you know anyone that worked at the**
5 **garage prior to being hired?**

6 A. No.

7 **Q. For how long did you work at that**
8 **garage?**

9 A. More or less one year.

10 **Q. Did you work at any other garages**
11 **during that one year?**

12 A. Yes, covering. Different parking lots.

13 **Q. What were your hours when you first**
14 **started at the garage at 169 and Jerome?**

15 A. Seven to seven. Twelve hours.

16 **Q. Seven a.m. to seven p.m., or seven p.m.**
17 **or seven a.m.?**

18 A. Seven p.m. to seven a.m. Always at
19 night.

20 **Q. How many days a week did you work at**
21 **that garage?**

22 A. Six days a week.

23 **Q. Did you work 12 hours per day on each**
24 **of those days of the week?**

25 A. 12 hours.

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Page 12

1 F. Santana
2 **Q. For how long did you work 12 hours a**
3 **day, six days a week? For what period of time?**

4 A. A long time. The whole time I worked
5 at that garage, I worked 12 hours. Except when I
6 worked my day off, they sent me to another parking
7 garage to cover.

8 **Q. Was there ever a time when you worked**
9 **more than 12 hours a day, six days a week, other**
10 **than the times that you were covering elsewhere?**

11 A. More than six days a week?

12 **Q. Did you ever regularly work more than**
13 **six days a week, 12 hours a day, for the defendant**
14 **garages?**

15 A. Regularly, no. But they always sent me
16 to different garages to cover.

17 **Q. How often were you sent to another**
18 **garage to cover?**

19 A. Many times.

20 **Q. How many times?**

21 A. Maybe 30 to 40 times, more or less.

22 **Q. Since August 2003?**

23 A. Every year about. Just talking about
24 that one year?

25 **Q. Since August 2003. Since August 2003**

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Page 13

1 F. Santana
2 **to present, how frequently did you work -- how**
3 **frequently did you cover other shifts?**

4 A. Frequently when I was off, the
5 supervisor would call me and ask if I could cover
6 for someone else.

7 **Q. Did you cover more than once a week?**

8 A. No.

9 **Q. Did you cover every week?**

10 A. No.

11 **Q. More than once a month?**

12 A. It could be.

13 **Q. Were you paid for the time that you**
14 **covered other shifts?**

15 A. I always took home the same amount of
16 money whether I worked six days or seven. At the
17 time that I complained and told Raj about it, they
18 gave me a little extra.

19 **Q. When did you complain to Raj?**

20 A. Many times.

21 **Q. When was the last time you complained**
22 **to him?**

23 A. I don't remember.

24 **Q. Have you complained to him about not**
25 **being paid for other shifts in the last year?**

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Page 14

1 **F. Santana**
2 A. In this year, yes. I've worked up to
3 seven days at the garage that I'm working at.
4 When they need someone to park, the guys go to
5 Santo Domingo, or something like that, he has
6 asked me if I want to work seven days. I need the
7 money, so I've done it.
8 **Q. Are you referring to the Bienvenido**
9 **Garage?**
10 A. Yes.
11 **Q. Are you paid for those hours when you**
12 **work seven days a week?**
13 MR. FAILLACE: Objection. You
14 asked and he responded already.
15 **Q. You can answer the question.**
16 MR. FAILLACE: You can answer the
17 question again.
18 A. Yes. He gives me something once in a
19 while.
20 **Q. Do you currently receive a paycheck**
21 **from your employer?**
22 A. Of course I do.
23 **Q. Does your paycheck indicate the number**
24 **of hours that you work?**
25 A. Yes.

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Page 15

1 **F. Santana**
2 **Q. And does it accurately indicate the**
3 **number of hours that you work?**
4 A. Yes.
5 **Q. And are you paid for all those hours**
6 **that are indicated on that paycheck?**
7 A. No. For the hours -- for the amount of
8 hours that I work, they do not pay them all. For
9 example, when I work seven days, he will give me a
10 little something extra.
11 **Q. What do you mean he will give you a**
12 **little something extra?**
13 A. 15, 20, 30, even \$40.
14 **Q. In cash or in check?**
15 A. Cash.
16 **Q. What is your current hourly rate of**
17 **pay?**
18 A. 7.15 an hour. Which is the minimum.
19 **Q. And how many hours a week do you work?**
20 A. Now?
21 **Q. Yes.**
22 A. 48 hours.
23 **Q. And are you paid \$7.15 for each of**
24 **those 48 hours each week?**
25 A. They pay me 40 hours at 7.15.

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Page 16

1 **F. Santana**
2 **Q. Are you paid for the other eight hours?**
3 A. Yes.
4 **Q. How much are you paid for the other**
5 **eight hours?**
6 A. 10-something.
7 **Q. So you're paid time and a half for each**
8 **of your hours above 40 hours a week?**
9 A. Yes. Less the seventh day, when I work
10 seven days. That's what they pay me for six days
11 that I work.
12 **Q. So are you paid for all the hours that**
13 **you work on those six days?**
14 A. After the 10 hours that I'm supposed to
15 get one hour, they don't pay that either. Never
16 pay that.
17 **Q. But for those hours you are paid?**
18 A. That hour is supposed to be given to me
19 by law, yes.
20 **Q. Is your current shift 10:30 p.m. to**
21 **6:30 a.m.?**
22 A. 6:30 a.m., yes.
23 **Q. Six days a week?**
24 A. Six days a week, yes.
25 **Q. How often do you work a seventh day in**

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Page 17

1 **F. Santana**
2 **a week?**
3 A. Many times.
4 **Q. How many times did you work seven days**
5 **in a week this month?**
6 A. This month that we are in now?
7 **Q. Yes.**
8 A. This month, I have not worked seven
9 days.
10 **Q. Did you work seven days in any week in**
11 **October 2007?**
12 A. I worked seven days, yes. About two
13 weeks -- for about two weeks. I don't remember
14 when it was in October. Maybe it was one or two
15 months ago.
16 **Q. How many times in the last year do you**
17 **think you have worked seven days in a week?**
18 A. I don't remember right now.
19 **Q. Was it more than five?**
20 A. Seven days, of course. I covered for
21 him for two weeks. If I wanted to work seven
22 days, they told me to work seven days.
23 **Q. How many times did you work seven days**
24 **in the last year approximately?**
25 A. Two weeks. In this year?

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1 F. Santana
 2 time.
 3 Q. For how long do you remain at the
 4 Dominican Republic when you visit?
 5 A. For as long as the company gives me.
 6 They are the ones that authorize my time.
 7 Q. What is the longest period of time you
 8 have visited the Dominican Republic since you were
 9 hired in August of 2003?
 10 A. One month and a half.
 11 Q. Do you generally go to the Dominican
 12 Republic for a month and a half every year?
 13 MR. FAILLACE: Objection. He told
 14 you --
 15 A. Just once I've been there for a month
 16 and a half.
 17 Q. How long did you visit the Dominican
 18 Republic on the other times that you went since
 19 August 2003?
 20 A. One week, 15 days. Like that. It
 21 depends. But they have all been with the
 22 company's knowledge.
 23 Q. Were you ever paid for the time that
 24 you were in the Dominican Republic other than when
 25 your father passed away in July?

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1 F. Santana
 2 Republic, have you taken any other vacation time
 3 since August 2003?
 4 A. No.
 5 Q. Did you take a leave of absence for any
 6 other reason?
 7 A. Like -- excuse me?
 8 Q. Did you ever take a leave of absence
 9 because you were sick?
 10 A. The time I have been working with this
 11 company, I have only been out two days and those
 12 were sick days.
 13 Q. When did you take those two sick days?
 14 A. Last year.
 15 Q. Do you recall when last year you took
 16 those sick days?
 17 A. I don't remember. Those were medical
 18 appointments I had.
 19 Q. On those two occasions, you took the
 20 entire day off?
 21 A. Yes, of course. A sick day, I take it.
 22 That's owed to me by law.
 23 Q. Have you ever paid another employee to
 24 work one of your shifts?
 25 A. No. I have never been out of work.

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1 F. Santana
 2 A. No.
 3 Q. Did you perform any work for the
 4 company while you were in the Dominican Republic?
 5 A. No.
 6 Q. Have you ever traveled outside of the
 7 United States besides to the Dominican Republic
 8 since you were hired?
 9 A. No.
 10 RQ MS. WHITE: I'm going to call for
 11 production of Mr. Santana's passport.
 12 Q. Do you have a passport?
 13 A. Yes, of course.
 14 Q. Have you had to renew your passport
 15 since August 2003?
 16 A. Yes. I have it with me also.
 17 Q. You have both the old passport and the
 18 new passport?
 19 A. Both, yes.
 20 RQ MS. WHITE: We're going to call for
 21 production of both passports from
 22 Mr. Santana.
 23 MR. FAILLACE: Taken under
 24 advisement.
 25 Q. Other than traveling to the Dominican

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1 F. Santana
 2 Q. Has any employee ever paid you for
 3 hours he was not working?
 4 A. No, never.
 5 Q. Have you ever let someone else punch
 6 your time card?
 7 A. No.
 8 MS. WHITE: I'm going to mark this
 9 as Exhibit 1. It's a payroll document.
 10 (Defendants' Exhibit 1, SP Payroll
 11 document, marked for identification, as
 12 of this date.)
 13 Q. Is that your signature on this
 14 document?
 15 A. Yes.
 16 Q. Do you recall when you signed this
 17 document?
 18 A. I don't remember, no. Maybe a year,
 19 year and a half ago.
 20 Q. Did you read this document when you
 21 signed it?
 22 A. No.
 23 Q. Are you able to read the document now?
 24 A. No. It's in English. I don't know
 25 English.

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1 F. Santana
2 **Q. The second paragraph is in Spanish. Do**
3 **you understand that paragraph?**
4 A. I understand, yes.
5 **Q. Did there come a time when your hours**
6 **were reduced to 48 hours a week?**
7 MR. FAILLACE: Objection.
8 A. 48, yes.
9 **Q. When were your hours reduced to 48**
10 **hours a week?**
11 A. Now in 2007.
12 **Q. In what month of 2007?**
13 A. February. More or less.
14 **Q. Mr. Santana, you were present earlier**
15 **today for Mr. Direcho's deposition testimony;**
16 **isn't that correct?**
17 A. Yes.
18 **Q. And you heard Mr. Direcho testify that**
19 **his hours were reduced to 48 hours per week in**
20 **February 2007; isn't that correct?**
21 A. Yes, I did. But I don't need to say it
22 because he said it.
23 **Q. Did you sign the document before you,**
24 **that has been marked as Exhibit 1, before or after**
25 **February 2007?**

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1 F. Santana
2 A. 2007, I don't remember. I think it was
3 before.
4 **Q. Did you ever take a meal break during**
5 **your regular shift?**
6 A. To lunch, no, never.
7 **Q. Lunch, dinner, or any other meal during**
8 **your shift?**
9 A. No, no. Not at all.
10 **Q. Did you ever eat any meal while you**
11 **were working on your shift?**
12 A. No.
13 **Q. Why not?**
14 A. I had no time. I worked alone in the
15 parking garage.
16 **Q. During your shift of 10:30 p.m. to 6:30**
17 **a.m., approximately how many cars enter or leave**
18 **the garage?**
19 A. Many. I don't know how many. The
20 ticket customers were many. The monthlies were
21 many. It's around 90 some odd cars which are
22 monthlies alone.
23 **Q. Approximately how many cars would enter**
24 **or leave per hour?**
25 A. Cars are always coming in and out.

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1 F. Santana
2 Always coming in and out. Customers don't have
3 any specific hours.
4 **Q. Is there ever a time when you are**
5 **working when there aren't cars coming in or out of**
6 **the garage?**
7 A. If there are any moments -- I'm always
8 doing something in the garage. I'm always busy.
9 Whether it be organizing the parking garage,
10 monthlies coming in all the time. Even if there
11 aren't too many cars entering for tickets, daily
12 tickets, the monthlies are always coming in and
13 out. And the times that I have for a little
14 while, a break, I would go out and clean the
15 parking garage. I have to maintain it clean. If
16 not the supervisor would let me know about it, and
17 I don't like anyone to tell me anything about my
18 job.
19 **Q. Do you ever take any breaks during your**
20 **shift?**
21 A. A break without working?
22 **Q. Yes.**
23 A. No. There is always continuous work to
24 be done.
25 **Q. Do you ever make personal telephone**

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1 F. Santana
2 **calls during your shift?**
3 A. Yes, I have called.
4 **Q. So during the times that you're making**
5 **a personal telephone call, you're not working,**
6 **correct?**
7 A. I called my wife in Santo Domingo once.
8 When my daughter was sick in Santo Domingo. She
9 had to be operated on.
10 **Q. How many times have you made personal**
11 **calls during your shift?**
12 A. Not many.
13 **Q. Approximately how many in a week?**
14 A. In one shift?
15 **Q. In one shift.**
16 A. Sometimes none. The majority of the
17 times none.
18 **Q. Approximately how many times in a week**
19 **would you make personal telephone calls?**
20 A. The customers are always calling up the
21 parking lot. Always telling me to get the car
22 ready for a certain hour. Or get it together for
23 the front. Everything by hour.
24 **Q. How many times in a week do you call**
25 **your wife during your shift?**

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1 F. Santana
 2 **Q. Have you heard commentary from other**
 3 **employees?**
 4 A. Employees of the parking garages?
 5 **Q. Yes.**
 6 A. I've heard comments.
 7 **Q. Which employees?**
 8 A. Of him being a lawyer. From different
 9 parking lots.
 10 **Q. Which employees from different parking**
 11 **lots?**
 12 A. Many.
 13 **Q. Give me the names of employees that you**
 14 **have heard Mr. Faillace's name spoken.**
 15 A. Names, I don't know. I've just heard
 16 people talking in different parking garages about
 17 this lawyer.
 18 **Q. Before you met with Mr. Faillace, did**
 19 **you call him?**
 20 A. If I called him?
 21 **Q. Yes.**
 22 A. Yes.
 23 **Q. How did you get Mr. Faillace's phone**
 24 **number?**
 25 A. I had written it down over there at the
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1 F. Santana
 2 **Q. Any hours that you worked other than**
 3 **that seventh day in a given week?**
 4 A. There are some that they didn't pay.
 5 Like, for example, when the supervisor would call
 6 me and ask me to do him a favor, and stay an hour
 7 or two extra. For instance, they wanted me to
 8 stay from seven in the morning after coming out of
 9 one garage until ten in the morning, three hours
 10 until that person was going to come. I would
 11 stay. And then I would see at the end of the pay
 12 period I'm coming home with the same amount of
 13 money like always.
 14 **Q. But you were always paid at least the**
 15 **minimum wage for your regular shift?**
 16 A. Yes.
 17 **Q. How often were you requested to work**
 18 **longer than your regular shift to cover someone**
 19 **else?**
 20 MR. FAILLACE: Objection.
 21 Objection. He's answered that.
 22 MS. WHITE: No, he hasn't.
 23 MR. FAILLACE: You can answer it
 24 again.
 25 A. Can you repeat the question again?
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1 F. Santana
 2 garage.
 3 **Q. Where did you get his telephone number?**
 4 A. It was written down on the wall.
 5 **Q. On the wall of what garage?**
 6 A. On the wall at Bienvenido Parking.
 7 **Q. What does it say on the wall?**
 8 A. It said his name and his telephone.
 9 **Q. What else did it say?**
 10 A. That's it. Lawyer.
 11 **Q. When did you first meet with him?**
 12 A. Maybe two months ago. Two months, two
 13 and a half months.
 14 **Q. In this lawsuit, what is it that you**
 15 **are claiming you were not paid for?**
 16 A. The lunch hour. The seven days that I
 17 worked and didn't get paid for. The hour that I'm
 18 supposed to get after working 10 hours. Whatever
 19 is owed to me by law.
 20 **Q. With the exception of the instances**
 21 **when you worked a seventh day in a given week,**
 22 **were you paid at least the minimum wage for all**
 23 **the hours that you worked since August 2003?**
 24 A. Are you referring to the six days a
 25 week?
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Page 41

1 F. Santana
 2 **Q. On how many occasions in the last year**
 3 **have you been asked to continue working after your**
 4 **shift ended at 6:30 in the morning?**
 5 A. In this last year, no. Except the
 6 times when I've worked a seventh day.
 7 **Q. Prior to this past year, how often**
 8 **approximately were you asked in a given month to**
 9 **work after your shift ended at 6:30 in the**
 10 **morning?**
 11 A. There weren't too many times. I would
 12 say about four or five times. Not many.
 13 **Q. Four or five times over what period?**
 14 **In a year?**
 15 A. From seven to nine a.m.
 16 **Q. Okay. So prior to 2007, you would stay**
 17 **later to work after 6:30 in the morning on four or**
 18 **five occasions?**
 19 A. Yes. I always worked until seven. I
 20 worked from seven to seven.
 21 **Q. Do you always receive a paycheck?**
 22 A. A check per week?
 23 **Q. Yes.**
 24 A. Yes.
 25 **Q. Do you still receive cash in addition**
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1 F. Santana
2 to your paycheck?
3 A. No, from 2007 on, no.
4 Q. When did you stop receiving cash in
5 addition to your paycheck?
6 A. I don't remember, but it was last year.
7 I don't remember what date exactly.
8 Q. Are you referring to 2007 or 2006?
9 A. 2006.
10 Q. Was it early in the year in 2006 or
11 late in the year in 2006 that you stopped
12 receiving cash in your paycheck?
13 A. Towards the end. End of 2006.
14 Q. When you would receive cash in addition
15 to your paycheck, how much cash would you receive
16 in a week?
17 A. \$15, \$20. If I worked seven days and I
18 told Raj about it, they would give me maybe \$30,
19 \$40 sometimes.
20 Q. Did you ever receive more than \$40 in
21 cash a week?
22 A. No.
23 Q. Paragraph 13 of the complaint in this
24 case states that, "Plaintiff Santana was given
25 approximately \$20 to \$70 a week in cash."

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1 F. Santana
2 Is that a correct statement?
3 A. \$20 yes, but not 70.
4 Q. Why did you receive cash in addition to
5 your paycheck?
6 A. I don't know.
7 Q. Who gave you the cash when you received
8 it?
9 A. The supervisor Raj.
10 Q. Did Raj say anything when he handed you
11 the cash?
12 A. He would leave it for me most of the
13 times when I wasn't there, or whatever, with the
14 check in an envelope, in the cabinet. I would
15 find the envelope there with maybe 15, \$20. It
16 varied. In cash.
17 Q. Prior to the end of 2006, did you
18 receive cash every week?
19 A. Yes, there was always something.
20 Q. Did you keep any record of how much
21 cash you received each week?
22 A. No.
23 Q. Did you declare on your income tax form
24 the amount of cash that you received?
25 A. In my taxes -- no.

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1 F. Santana
2 Q. Why did you stop receiving cash at the
3 end of 2006?
4 A. I don't know. I don't know.
5 Q. Isn't it a fact that you stopped
6 receiving cash because you started being paid for
7 meal breaks?
8 MR. FAILLACE: Objection.
9 A. My lunch break that they paid -- they
10 never paid me lunch breaks. Lunch hours. I never
11 took a lunch.
12 Q. You're alleging that the company didn't
13 pay you for your lunch hour; isn't that correct?
14 A. Yes, of course.
15 Q. Are you currently being paid for your
16 lunch hour?
17 A. Now? If they are paying it now?
18 Q. Yes.
19 A. Yes.
20 Q. When did the company start paying you
21 for your lunch hour?
22 A. Now in 2007.
23 Q. When in 2007 did the company start
24 paying you for your lunch hour?
25 A. I don't know exactly.

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1 F. Santana
2 Q. Is it early in 2007?
3 A. I couldn't tell you. I don't remember.
4 Q. Have you kept any of your pay stubs?
5 A. Stuff from the check?
6 Q. Yes.
7 A. Yes.
8 RQ MS. WHITE: I'm going to call for the
9 production of Mr. Santana's pay stubs.
10 Q. Did you take any documents from any of
11 the garages?
12 A. No, never.
13 Q. Do you know an individual by the name
14 of Samuel Gerraro?
15 A. Samuel, yes, I know him. I relieve him
16 at the parking lot.
17 Q. When was the last time you spoke to
18 Mr. Gerraro?
19 A. With Samuel -- I have no conversations
20 with him. I just -- when he relieves me, I just
21 say hello. That's it.
22 Q. Have you ever talked to Mr. Gerraro
23 about your claims in this litigation?
24 A. No, never. When I finish my job, I go
25 home to rest. I've been working the whole night.

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EXHIBIT N

SP Payroll corp.

1832 Second Ave
New York, NY 10128
212 289 3800
fax: 212 202 5354

I understand that company policy is I will receive a 1 hour meal break per shift. The 1 hour per shift will be deducted from the time card total. The break must be taken, at employee discretion.

Yo entiendo que la reglas de la compania es que yo recibire 1 hora de luch por cada turno. La hora por cada turno sera reducida de el total de horas de la tajeta. El tiempo para la comida devera ser cojido.

Franklin Santana

employee name

employee signature

EXHIBIT O

1
2
3 UNITED STATES DISTRICT COURT

4 SOUTHERN DISTRICT OF NEW YORK
5 -----

6 ANGELO PENA, ROLANDO ROJAS, JOSE DIRECHO,
7 and FRANKLIN SANTANA, individually and
8 on behalf of others similarly situated,

9 Plaintiffs,

10 vs. No. 07 CV 7013

11 SP PAYROLL, INC., NICHOLAS PARKING CORP.,
12 IVY PARKING, CORP., BIENVENIDO LLC,
13 CASTLE PARKING CORP., SAGE PARKING CORP.,
14 & SAM PODOLAK,
15 Defendants.
16 -----

17 DEPOSITION OF MIGUEL ALCANTARA
18 New York, New York
19 Tuesday, November 13, 2007
20
21
22

23 Reported by:
24 Meredith Stoeckel
25 JOB NO. 14013

Page 10

1 M. Alcantara
 2 **Q. Can you give me the first names of the**
 3 **individuals you recall?**
 4 A. Let me see if I remember. The fact
 5 that we worked in different parking garages, I
 6 don't remember the other names. I don't have the
 7 names in mind right now.
 8 **Q. Who was the attorney that was**
 9 **representing you in that case?**
 10 A. Mr. Michael.
 11 **Q. When you say that the nature of the**
 12 **case was for hours that hadn't been paid, what do**
 13 **you mean by that?**
 14 MR. FAILLACE: Objection. He's
 15 understanding "this" case. You have to
 16 clarify which case.
 17 **Q. In the prior litigation in which**
 18 **Mr. Faillace represented you against Jose Tavares,**
 19 **you previously testified that you were suing for**
 20 **hours that hadn't been paid to you. What did you**
 21 **mean by that?**
 22 A. He wasn't paying the extra hours.
 23 **Q. What do you mean by the extra hours?**
 24 A. We worked six-day shifts, which should
 25 have been 72 hours, and sometimes seven-day

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Page 12

1 M. Alcantara
 2 **Tavares, what period of time did that cover in**
 3 **terms of the hours that you say you weren't paid**
 4 **for?**
 5 A. It was around two and a half years
 6 worth.
 7 **Q. Can you give me the approximate dates**
 8 **of that period of time?**
 9 A. I started working there January 10,
 10 2000, and lasted until about around July 1 --
 11 beginning of July 2002.
 12 **Q. For which garages did you work between**
 13 **January 10, 2000 and July 1, 2002?**
 14 A. Which garages?
 15 **Q. Yes.**
 16 A. I was at 155 Street. 145. A place
 17 called Dikeman. Around the 200's. And sometimes
 18 I would cover when someone was missing. They
 19 would send me to other garages to fill in for
 20 someone.
 21 **Q. So is it your testimony today that the**
 22 **prior lawsuit that you had against Jose Tavares**
 23 **involved your claim that you had not been paid**
 24 **hours for work at the garages that you just named?**
 25 A. Yes.

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Page 11

1 M. Alcantara
 2 shifts. And the extra hours he wasn't paying
 3 them.
 4 **Q. How many other plaintiffs were in that**
 5 **lawsuit?**
 6 A. I'm not sure. I don't know the
 7 amounts.
 8 **Q. Was that lawsuit ever resolved?**
 9 A. We came to an agreement.
 10 **Q. Did you receive money?**
 11 MR. FAILLACE: Objection. He has
 12 signed a confidentiality agreement. He
 13 can't talk. I mean, you're asking him
 14 about a prior lawsuit. He signed a
 15 confidentiality agreement. A release.
 16 MS. WHITE: Are you directing him
 17 not to answer that question?
 18 MR. FAILLACE: He can't. He
 19 can't. He's answered it enough. He
 20 can't. I mean, you're asking him what he
 21 received. I mean, I'm just following
 22 what the confidentiality agreement says
 23 he has to do. He told you about the
 24 case.
 25 **Q. In that prior lawsuit against Jose**

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Page 13

1 M. Alcantara
 2 **Q. Have you ever been a plaintiff or**
 3 **defendant in any other civil litigation? Other**
 4 **than this case and the case you just mentioned**
 5 **against Jose Tavares.**
 6 A. No.
 7 **Q. By whom are you currently employed?**
 8 A. I am not working right now. I am out
 9 of the company.
 10 **Q. Do you have any job right now?**
 11 A. No, I am not working.
 12 **Q. When was the last time you were**
 13 **employed?**
 14 A. The last check I received from this
 15 company was the 15th of October.
 16 **Q. Of what year?**
 17 A. 2006.
 18 **Q. Have you held any other jobs since**
 19 **October 15, 2006?**
 20 A. No, I have not returned to work.
 21 **Q. Have you worked for any entity other**
 22 **than the defendants in this case since October 15,**
 23 **2006?**
 24 A. No.
 25 **Q. When were you hired by the defendants**

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Page 14

1 M. Alcantara
2 in this case?
3 A. I don't understand the question.
4 Q. Is it your testimony that the last
5 paycheck that you received from the defendants in
6 this case was on or about October 15, 2006?
7 A. By the defendants?
8 Q. Yes.
9 A. When you refer to the defendants, who
10 do you mean?
11 Q. Do you understand that you've brought a
12 lawsuit, and that's why we're here today, to
13 answer questions regarding that lawsuit?
14 A. Yes.
15 Q. Who is it that you understand that you
16 are suing in this case?
17 A. Mr. Sam.
18 Q. Sam Podolak?
19 A. Yes.
20 Q. When were you first hired by Sam
21 Podolak?
22 A. May 1, 2003.
23 Q. When was the last day that you were
24 employed by Sam Podolak?
25 MR. FAILLACE: Objection. He's
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1 M. Alcantara
2 time frame?
3 A. No.
4 Q. For which garage were you hired in
5 May 1, 2003?
6 A. They hired me to work in any one of the
7 garages that belonged to Sam Podolak. That's what
8 I understood. He didn't put me in any specific
9 one.
10 Q. Okay. Did you work for both the garage
11 at 155 and 145 for that entire time that you were
12 employed by Mr. Podolak?
13 A. Yes, mostly there.
14 Q. How did you first learn of the position
15 with the defendant?
16 A. I don't understand.
17 Q. How did you first learn of the job
18 opening?
19 A. First of all, I worked in that company
20 with Mr. Jose.
21 Q. Was Jose Tavares the individual who
22 hired you?
23 A. Yes.
24 Q. Who was your supervisor when you were
25 first hired on May 1, 2003?
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1 M. Alcantara
2 answered that already twice.
3 Q. You can answer it again.
4 A. I answered that question already but if
5 I have to answer it again, I'll answer it again.
6 I'll tell you the same. The last check I
7 received -- 15th of October. That was the last
8 date I worked.
9 Q. Okay. For what garages did you work
10 between May 1, 2003 and October 15, 2006?
11 A. I worked at 155. The one that's on
12 Saint Nicholas, that's called 145. And sometimes
13 they would send me to other garages to cover
14 anyone that was out.
15 Q. What other garages did you work at
16 besides 155 and 145?
17 A. Sometimes they send me to 169 and
18 Jerome. 199 and Webster. There's one -- there is
19 a small lot about three blocks away from the one
20 at 145 and Saint Nicholas. I just don't remember
21 the name of it or the street.
22 Q. Were you employed by Mr. Podolak
23 continuously from May 1, 2003 to October 15, 2006?
24 A. Yes.
25 Q. Did you have any other jobs during that
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Page 17

1 M. Alcantara
2 A. Raj.
3 Q. Was Raj your supervisor the entire time
4 that you were employed up through October 15,
5 2006?
6 A. Yes.
7 Q. What were your hours when you were
8 first hired in May 2003?
9 A. Seven to seven. Seven p.m. to seven
10 a.m.
11 Q. How many days a week did you work seven
12 p.m. to seven a.m.?
13 A. Five days, sometimes six. Sometimes
14 even seven days.
15 Q. On average, how many hours a week did
16 you work?
17 A. 60 hours. Sometimes 72. Even up
18 to 84.
19 Q. Did your hours differ depending on the
20 garage at which you worked?
21 A. No, I always worked the same shift.
22 At the same amount of hours.
23 Q. Did you punch a time clock when you
24 arrived at the beginning of your shift?
25 A. Yes.
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1 M. Alcantara
 2 **Q. Did you always punch a time clock at**
 3 **the end of your shift?**
 4 A. Yes.
 5 **Q. Did you ever punch out if you left in**
 6 **the middle of a shift?**
 7 A. No. I would never leave half a shift.
 8 **Q. Did you ever start work prior to the**
 9 **start of your shift?**
 10 A. If I started? I don't understand.
 11 **Q. Your shift typically began at seven**
 12 **p.m. at night; is that correct?**
 13 A. Yes.
 14 **Q. Did you ever begin work prior to seven**
 15 **o'clock at night?**
 16 A. No. I always started at seven. That
 17 was my shift.
 18 **Q. Did you ever continue working after**
 19 **your shift was over at seven o'clock in the**
 20 **morning?**
 21 A. Sometimes if the other person got there
 22 late, was coming late. Raj would call me and ask
 23 me to stay until the person showed up. Could have
 24 been two or three hours. Raj would call me and
 25 ask me to stay until he arrived.

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Page 19

1 M. Alcantara
 2 **Q. On how many occasions did that happen**
 3 **where you had to stay two or three hours to wait**
 4 **for the next person to arrive?**
 5 A. I couldn't tell you exactly how many
 6 times or how many hours. It happened on occasion
 7 and in emergency cases. Things like that.
 8 **Q. Did it happen more than five times?**
 9 A. Five. Six. Seven times maybe.
 10 **Q. And when you stayed late to wait for**
 11 **the next person to arrive, did you wait to punch**
 12 **out your time card until the other person arrived**
 13 **and you left for the day?**
 14 A. I usually did that, but sometimes I had
 15 already punched when Raj calls me to work more
 16 time. And those hours, I would punch again.
 17 **Q. Okay. Did you get paid for those two**
 18 **or three hours when you were waiting for the next**
 19 **person to arrive for their shift?**
 20 A. Those hours they hardly ever paid.
 21 Sometimes they would add a little something
 22 besides the check but not much.
 23 **Q. Approximately how much would you be**
 24 **paid per hour on those instances where you stayed**
 25 **to wait for the next person to arrive?**

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Page 20

1 M. Alcantara
 2 A. Sometimes they just -- they wouldn't
 3 pay. They just put something -- a little
 4 something in cash -- 15 or \$20. But not all the
 5 time.
 6 **Q. Of the five to seven times that you**
 7 **stayed late to wait for somebody else, how many of**
 8 **those instances were you not paid for the hours**
 9 **that you worked?**
 10 A. Besides the 15 or \$20 that they paid in
 11 cash, sometimes they gave 20, 25, \$30 extra.
 12 Sometimes -- once or twice only, when I've worked
 13 a full day, besides my regular, they have given me
 14 an additional 30, \$40.
 15 **Q. On the five to seven occasions when you**
 16 **worked a few extra hours to wait for the next**
 17 **person to arrive, were you paid at least some cash**
 18 **on each of those occasions?**
 19 MR. FAILLACE: Objection. He
 20 answered it already twice. Go ahead.
 21 Answer it.
 22 A. Just like I told you before, besides
 23 the amount they would give in cash, a little bit
 24 they would give in cash, give me 20, \$25, maybe
 25 once. And maybe one time \$40 they gave me, but

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Page 21

1 M. Alcantara
 2 nothing more than that.
 3 **Q. Between May 2003 and October 2006, did**
 4 **you ever take a leave of absence from work?**
 5 A. No, I never -- I worked straight the
 6 whole time. I never took vacation or anything.
 7 I was never out of work.
 8 **Q. Did you ever leave the country between**
 9 **May 2003 and October 2006?**
 10 A. No.
 11 **Q. Your testimony then is that you never**
 12 **visited even the Dominican Republic during that**
 13 **three and a half year time period?**
 14 A. No. I haven't returned.
 15 **Q. Do you have a passport?**
 16 A. Yes.
 17 **Q. Have you renewed that passport since**
 18 **May 2003?**
 19 A. No, I have not renewed it.
 20 RQ MS. WHITE: I'm going to call for
 21 production of Mr. Alcantara's passport.
 22 MR. FAILLACE: Take it under
 23 advisement.
 24 **Q. Did you ever let someone else punch**
 25 **your time card in or out?**

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Page 22

1 M. Alcantara
 2 A. No.
 3 Q. When you worked at the garages at 155
 4 or 145, did you work with any other employees on
 5 your shift?
 6 A. Sometimes one person worked.
 7 Sometimes two. At 145, only two people worked.
 8 Q. What about at 155, how many --
 9 A. I've even worked alone at 145. At 155
 10 two of us worked, and sometimes three.
 11 Q. How often would you work by yourself at
 12 145?
 13 A. I only worked there alone twice.
 14 Q. Have you ever paid another employee to
 15 work a shift for you?
 16 A. No.
 17 Q. Has an employee ever paid you for
 18 working a shift for them?
 19 A. No. Not even.
 20 Q. In this lawsuit, what is it that you're
 21 claiming you were not paid for?
 22 A. First of all, they haven't paid me a
 23 lunch hour. One hour for every day that I worked
 24 that they used to take away.
 25 Q. Are you claiming that you weren't paid

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Page 23

1 M. Alcantara
 2 for anything else other than your lunch hour?
 3 A. No, they did not pay me. And also
 4 according to law, after you work 10 hours they're
 5 supposed to pay one hour additional. They didn't
 6 pay that either. I always worked 12 hours.
 7 Q. Other than the lunch hour, and the
 8 extra hour after working 10 hours, are there any
 9 other hours of time that you're claiming you
 10 weren't paid for in this case?
 11 A. The extra hours worked after 40 hours a
 12 week. I only received 15 to \$20 to compensate for
 13 that -- cash. Besides the check. The other hours
 14 were paid regular.
 15 Q. Were you paid at least minimum wage for
 16 the first 40 hours that you worked each week?
 17 A. Minimum wage.
 18 Q. Did there come a time when your work
 19 schedule was reduced to 48 hours a week?
 20 A. I don't remember whether it was three
 21 or four days that I worked. Up to 48 hours.
 22 Q. Was there ever a time that your regular
 23 schedule for each week was decreased to 48 hours
 24 per week?
 25 A. That only happened for one or two weeks

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Page 24

1 M. Alcantara
 2 that they reduced my hours. I believe they
 3 reduced it because I complained about the hour.
 4 It was like a punishment.
 5 Q. When was it that your hours were
 6 reduced to 48 hours?
 7 A. That's when I was working. One time I
 8 called Pablo before I left. I called him to
 9 explain to him that I was -- I was claiming the
 10 hours that they owed me. And he told me he was
 11 going to speak to Sam about it, but that they were
 12 in no condition to pay those extra hours.
 13 Q. In what year did you make this
 14 complaint?
 15 A. I always complained about it, but it
 16 seems that at the end they punished me and lowered
 17 my hours.
 18 Q. Your hours were lowered to 48 hours for
 19 only two weeks -- one to two weeks?
 20 MR. FAILLACE: Objection. Already
 21 answered.
 22 A. One or two weeks, yes.
 23 Q. Did your hours increase after those two
 24 weeks to more than 48 hours a week?
 25 A. Then I started working regular, yes.

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Page 25

1 M. Alcantara
 2 Q. In what year was it that your hours --
 3 that for two weeks you worked 48 hours?
 4 A. 2006. That was like to placate me.
 5 Q. Immediately prior to your employment
 6 terminating in October of 2006, were you still
 7 working the seven p.m. to seven a.m. shift?
 8 A. Can you repeat the question?
 9 Q. I will rephrase. In October 2006 right
 10 before your employment terminated, what was your
 11 shift?
 12 A. Seven to seven.
 13 Q. Did you ever leave the work premises
 14 during a shift?
 15 A. I never left my job.
 16 Q. Did you ever take a break to eat a meal
 17 during your shift?
 18 A. Never took a break. I was always busy.
 19 Q. Did you ever see any of the other
 20 employees take a break during the shift?
 21 A. No. We were always taking care of the
 22 vehicles. Whether it be giving them in, or
 23 bringing them in -- receiving them, or giving them
 24 back. Cleaning the bathroom, garage area. It was
 25 always busy. The parking lot where we were

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1 M. Alcantara
2 thing. He would tell me he was going to speak to
3 Sam. And nothing. I said to myself, what's going
4 on here? I'm working, working, working. And very
5 little money is being paid. And any time they
6 called me to cover someone, I would go. I could
7 have had a headache or anything and I would go. I
8 never told them no. I always covered wherever
9 they asked me to.

10 Q. How often would you cover a shift other
11 than your scheduled seven p.m. to seven a.m.
12 shift?

13 A. There are people that are always out
14 late, or they don't come to work. Irresponsible
15 people. Not everyone is the same. And the one
16 that doesn't stay out of work is the one that
17 always has to go. That's the one that always pays
18 the consequences.

19 Q. My question is not why did you work an
20 extra shift. My question is, how often did you
21 cover a shift for somebody else?

22 MR. FAILLACE: He already told you
23 the number of times.

24 A. That happened occasionally. That
25 wasn't all the time. That was on emergency cases.

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Page 31

1 M. Alcantara

2 Q. How many times in a year would that
3 happen?

4 A. I couldn't tell you how many times in
5 one year. I don't know.

6 Q. Other than working a seventh day, which
7 we have already talked about, or waiting for
8 someone else to arrive at your garage at the end
9 of your shift, were there any other times that you
10 would be working other than your regular seven
11 p.m. to seven a.m. shift?

12 A. Sometimes if I had to wait for my
13 relief for a couple of hours, Raj would call me
14 and ask me to wait until then.

15 Q. Did you keep your paycheck stubs?

16 A. Yes.

17 RQ MS. WHITE: Call for the production
18 of paycheck stubs for Mr. Alcantara.

19 MR. FAILLACE: As soon as we get
20 them done, we'll get them to you.

21 Q. Did you keep a record of how much cash
22 you received a week?

23 A. When you say "paychecks," you mean the
24 part of the check?

25 Q. Yes.

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1 M. Alcantara

2 MS. WHITE: Can you read back my
3 last question?

4 (Record read.)

5 A. No.

6 Q. Did you declare the cash on your income
7 tax form?

8 A. No.

9 Q. Did there come a time when you stopped
10 receiving cash and you only received a paycheck?

11 A. Yes.

12 Q. When was that?

13 A. I don't remember exactly. I know it
14 was in 2006, but I don't remember exactly when.
15 I don't remember exactly.

16 Q. Was it early in 2006?

17 A. I'm not sure exactly.

18 Q. Do you recall was it in the first half
19 of the year of 2006?

20 MR. FAILLACE: Objection. He
21 already said he doesn't remember.

22 A. Something like that. I don't remember
23 exactly.

24 Q. Did there come a time when you started
25 being paid for your lunch hour?

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Page 33

1 M. Alcantara

2 A. Then they started paying the 60 hours
3 completely on the check.

4 Q. Was that approximately the same time as
5 you stopped receiving cash?

6 A. Yes.

7 Q. Did you receive time and a half for the
8 hours that you worked over 40 hours a week when
9 you stopped receiving cash?

10 A. Yes.

11 Q. So is it your testimony today that at
12 approximately the time when you stopped receiving
13 cash in 2006 from that point forward you were paid
14 for your lunch hour, and you were paid time and a
15 half for any overtime over 40 hours a week?

16 A. Lunch hour, no, because we weren't
17 taking lunch.

18 Q. But you were being paid for all hours
19 that you would work?

20 A. That's when they started paying us the
21 complete hours.

22 Q. Did you ever take any business
23 documents from any of the garages?

24 A. No.

25 Q. Why did you stop working at the garages

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